

BONDURANT, MIXSON & ELMORE, LLP

ATTORNEYS AT LAW

3900 ONE ATLANTIC CENTER

1201 WEST PEACHTREE STREET, N.W.

ATLANTA, GEORGIA 30309-3417

(404) 881-4100

TELECOPIER (404) 881-4111

EMMET J. BONDURANT

WRITER'S DIRECT DIAL NUMBER

(404) 881-4126

BONDURANT@BMELAW.COM

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BY HAND DELIVERY

Steve Ensor
Alston & Bird LLC
One Atlantic Center
1201 W. Peachtree St. NW
Atlanta, Georgia 30309

I represent Mr. Joe Patten. Mr. Patten has asked that I respond on his behalf to Mr. Edward L. ("Woody") White's letter of September 2, 2010, which was sent in Mr. White's capacity as President of the Board of Trustees of Atlanta Landmarks Inc. d/b/a The Fox Theatre (the "Fox").

In that letter, Mr. White notified Mr. Patten of the Board of Trustees' decision to terminate Mr. Patten's lease of his home for over 30 years within the Fox Theatre building. Mr. White stated in his letter that "the 1979 lease will therefore terminate on the 90th calendar day from the date of this letter," i.e., on December 1, 2010.

In its letter to Mr. Patten and in many public statements, the Board has made it known that it has taken action against Mr. Patten because of the perception that Mr. Patten, at age 83, is physically unable to live in his apartment without assistance. By terminating Mr. Patten's lease, explicitly because of Mr. Patten's perceived medical condition, the Board has acted in violation of both federal and Georgia law and breached its obligations under Mr. Patten's lease.

The federal Fair Housing Act, 42 U.S.C. § 3601, et. seq., and make it unlawful to refuse to rent or "otherwise make unavailable or deny" housing to an individual on the basis of a disability or "[b]eing regarded as "disabled." (The perception that a person is not able to care for himself triggers protection under both Acts. See 45 C.F.R. §84.3 (j)(2)(ii).)

However, representatives of the Fox have made it painfully clear to Mr. Patten and the public at large that they have acted to removed Mr. Patten from his apartment *explicitly* because of their perceptions, however incorrect, about his medical condition. We believe that members of the Board were unaware of or simply disregarded these legal obligations to Mr. Patten.

The Board's actions against Mr. Patten are particularly regrettable in light of Mr. Patten's lifelong commitment to the preservation of the Fox as an architectural and cultural treasure for the Atlanta community. Despite the Board's actions, Mr. Patten continues to revere the Fox. He deeply regrets now being forced to into the position of having to fight to stay in his home and enforce his right against unlawful discrimination. Of course, Mr. Patten shares the Board's desire to resolve the matter amicably with the Fox, and would prefer not to have to take legal action against the Board-- many of whose members he regards as personal friends.

Contrary to what some have suggested, Mr. Patten did not ask to live within the Fox Theatre building. Rather, in 1979 the Board asked Mr. Patten to sell his home, invest a substantial amount of time and money, and move into the Fox on a full-time basis in return for a lease that would extend for the term of his life. The lease was drafted initially by the Board and was reaffirmed in 2008, when the Board extended its term to 180 days after Mr. Patten's death.

That the lease was executed at the Board's-- and not Mr. Patten's-- initiative is apparent from its opening two paragraphs. The first paragraph states that "the Board of Trustees... [saw] an opportunity to have improved and utilized, at no expense to [the Fox], an area of the Fox Theatre building which had deteriorated over the years and which at present had little or no productive value." The second paragraph states that the Board was also "convinced that, in addition to those concrete benefits, the overall protection and security of the National Historic Landmark will be enhanced" by Mr. Patten's "continuing occupancy" of an apartment in the Fox Theatre.

The Board also recognized Mr. Patten's critical leadership, as Chairman of the "Save the Fox" Committee of Atlanta Landmarks, Inc., in saving the Fox from demolition in the 1970's. Later at the time when Mr. Patten was asked to move into the apartment, he served as the Fox's technical Director, and would do so for more than two decades. If the foresight and wisdom of the Board's decision to ask Mr. Patten to move into and live at the Fox was not immediately recognized by having its Technical Director onsite on a full-time basis, it was rewarded a thousand times over seventeen years later, when a fire broke out deep within the building in the early hours of April 15, 1996. Because Mr. Patten knew every nook and cranny of the Theatre, Mr. Patten was able to sound the alarm, pinpoint the exact

location of the fire, and lead firefighters to that location. As a result of his actions, the fire was extinguished quickly and without extensive damage to the Theatre. As the general manager of the Fox later said, Joe Patten “saved the Fox for the second time.”

Although the Board of Trustees wanted Mr. Patten to take up residence at the Fox, it did not grant him an apartment rent-free. Mr. Patten was required by Paragraph 3.1 of the lease to “pay the entire rent due and to become due for the full term of this Lease” *in full and in advance*, by investing a minimum of \$50,000 from the proceeds of the sale of his home to pay the full cost of renovating a “deteriorated” space in the building and converting it into an apartment. In today’s dollars, the value of Mr. Patten’s advance payment of rent would exceed \$200,000.

In return, Mr. Patten was guaranteed the right to live at the Fox for the remainder of his life and until his death. Thus, the Trustees agreed in Paragraph 1.3 that the term of the lease would continue until the 60th day following Mr. Patten’s death. The Fox affirmed the lease and its life term when, as recently as March 18, 2008, it extended the time for Mr. Patten’s family to move out his belongings until 180 days after his death.

The lease even anticipated that Mr. Patten’s health might decline with old age. Thus, in 1979, the Board reserved a very carefully defined and limited right in Paragraph 9.1(a) to terminate the lease based on the need for elder care only under three conditions: (1) if Mr. Patten should become “totally disabled;” (2) that he “remained in such condition for 180 consecutive days or more;” and (3) that a majority of a panel of three medical doctors certify that “it would be in [Mr. Patten’s] best interest... to be hospitalized or placed in a nursing home.”

Mr. White and the Board do not claim that any of these three conditions have been met. Although Mr. Patten has suffered a minor stroke and has diabetes, he is far from being “totally disabled” or unable to live outside of a nursing home. Mr. White and the Board have instead attempted to avoid the specific limitation in Paragraph 9.1(a) of the lease by invoking the general provision in Paragraph 9.1(b) by terminating the lease by a two-thirds vote without complying with the conditions set forth in Paragraph 9.1(a). However it is well established that a specific provision in a lease that addresses a particular subject or condition-- such as the possibility that Mr. Patten’s health might someday decline to the point of his being totally disabled and unable to live outside a nursing home-- controls over a general provision, such as the general termination power contained in Paragraph 9.1(b). Put simply, the Board’s power to terminate the lease under the general provision in Paragraph 9.1(b) does not include the power to terminate the lease for health-related reasons, which are specifically covered under Paragraph 9.1(a). Paragraph 9.1(b) cannot be

interpreted-- as the Board apparently has interpreted it-- to simply nullify or render meaningless the specific limitations on the Board's termination power contained in Paragraph 9.1(a). *See Museum Tower Condo Ass'n. v. Children's Museum of Atlanta, Inc.* 297 Ga. App 84,87, 676E2d 448, 450 (2209) ("we must remember that a limited or specific provision will prevail over one that is more broadly inclusive."); *Woody's Steaks, LLC v. Pastoria*, 261 GA. App. 815 818, 584, S.E.2d 41,44 (2003) ([W]hen a provision specifically addresses the issue in question, it prevails over any conflicting general language.")

The Board's abuse of its termination power in Mr. Patten's lease agreement serves to reinforce the illegality of its action to deny Mr. Patten's right to continue living in his apartment in violation of the federal Fair Housing Act and the Georgia Fair Housing Act. As mentioned previously, each of these laws make it unlawful for the Board to "refuse to" rent or "otherwise make unavailable or deny" Mr. Patten his apartment on the basis of its perception that he is unable to independently care for himself. 42 U.S.C. §§3604, 3613; O.C.G.A. §§8-3-202(1), (6).

(Atlanta Landmarks is not exempt from either of these provisions because, among other reasons, it is not a "private individual owner." O.C.G.A. §8-3-202(b)(1)(A); 42 U.S.C. §3603(b); *see also Smith and Lee Assocs., Inc. v. City of Taylor, Mich.*, 13 F.3d920, 924 (6th Cir. 1993) (stating that homeowners in FHA are "applicable *only* to the sale and rental transactions of *single family homeowners*.").)

There can be no dispute that the Board's decision to terminate Mr. Patten's lease was based on the Board's belief that Mr. Patten is physically disabled from continuing to live at the Fox because of his advancing age and medical condition. This conclusion is painfully clear from the Board's direct oral and written communications to Mr. Patten and its many invocations of Mr. Patten's health in its public statements on this issue.

The Board's discriminatory action against Mr. Patten began immediately after Mr. Patten suffered a minor stroke that caused him to be hospitalized for a short period of time. While Mr. Patten was recuperating at Wesley Woods, representatives of the Board of Trustees, including Woody White, the President of the Fox Board, Beauchamp Carr, Alan Thomas, the Chairman of the Board, and Edward Hutchison, paid Mr. Patten several visits, often in pairs. They told Mr. Patten that, because of concerns about his health condition, the Board did not want him to return to his home in the Fox after his discharge from Wesley Woods, but preferred instead that he leave the Fox and move into an assisted living facility.

Mr. Patten neither needed nor wanted to move into an assisted living facility and instead returned to his apartment in the Fox. Within an hour of his return from Wesley Woods, Mr. Patten received a hand-delivered letter from Mr. White. Demanding on behalf of the Fox

that he “move forward in acquiring an assisted living, as we have been urging,” and threatening to terminate Mr. Patten’s lease if he refused to comply with that demand. Copies of Mr. White’s letter dated August 11, 2010, and my response on behalf of Mr. Patten dated August 13, 2010, are attached hereto as exhibits A and B.

Mr. White’s letter of August 11 began with a reference to his and other Board members’ discussions with Mr. Patten during his hospitalization at Wesley Woods. Mr. White said, “that the purpose of this letter is to *confirm* the conversations that we have had over the past several weeks concerning *your health and your future living arrangements at the Fox Theatre.*”

Mr. White’s letter went on to state that, “as we discussed” during Mr. Patten’s hospitalization at Wesley woods, “we are *very concerned about your medical condition... [but that] our ongoing concerns about your health...must be weighed against our obligation to the Theatre and how your [physical] condition affects the Theatre.*”

In the next paragraph, Mr. White asserted that “the original basis for the lease, permitting you to live in the Theatre, was for the security of the Fox.” This statement was the first of several untrue statements contained in Mr. White’s letter. To the contrary, the lease states that while the Board of Trustees was “convinced that... the overall protection and security of this national Historic Landmark will be enhanced by [Mr. Patten’s] continuing occupancy” of an apartment at the Fox, the lease makes clear in Paragraph 19.1 that “*it is not the intent to this Lease to place upon [Mr. Patten] any legal obligation* with respect to the subject matter of this Section [i.e. “Security”], but rather to express the expectation that added security protection for the Theatre Property will be a natural outgrowth of the consummation of this Lease.”

Even though Paragraph 19.1 makes clear that Mr. Patten did not have an “legal obligation” to provide security, Mr. White nevertheless invoked Mr. Patten’s health condition as a basis to challenge whether Mr. Patten would continue to provide security for the Fox, stating “*your present medical condition makes it clear that you are no longer in a position to fulfil any obligation in that regard.*” This statement, in addition to being legally inaccurate, is also factually untrue. Mr. Patten is able to monitor the security of the Fox from his apartment in the same manner that he has for years. His apartment is equipped with electronic monitors on each of its two floors that enable him to instantly detect, pinpoint and report the location of a fire or security breach anywhere in the Fox Theatre, without so much as leaving the apartment. That is exactly how he “saved the Fox for the second time” in 1996.

Mr. White also claims in his letter of August 11 that Mr. Patten's "deteriorating health has placed an increasing burden on the Theatre's Staff... [and] is both unfair to them and affects the Theatre's operations." These statements are also untrue. Mr. Patten had been in his apartment for less than an hour when Mr. White's letter arrived, and Mr. Patten had not requested the assistance of any member of the Fox upon his return from Wesley Woods. As I stated in my reply to Mr. White's letter, Mr. Patten was and remains perfectly capable of making his own decisions regarding his health, physical condition, and living arrangements, and "Mr. Patten neither expects nor requires any assistance from the Theatre staff, either now or in the future."

Mr. White goes on to confirm the motivation for his letter, stating that, "*We are concerned that your medical condition precludes you from living alone, taking care of yourself in your apartment...*"

There is nothing, however, in Mr. Patten's lease-- much less under Georgia and federal law-- that would justify the Fox mandating that Mr. Patten "live alone and take care of himself in his apartment" without assistance. The Georgia and federal Fair Housing Act protect Mr. Patten from being denied housing on this basis. And the only restriction in Mr. Patten's lease on his use of the apartment is contained in Paragraph 4.1, which states that he must use the apartment "for residential purposes and no other purposes." Thus Mr. Patten has the same rights under the lease as any other apartment dweller, who may choose to have a housekeeper and other caregiver should such assistance be needed.

Mr. White went even further in his letter. He demanded that Mr. Patten not return to his apartment until Mr. White had spoken to and received written confirmation from Mr. Patten's doctor that Mr. Patten was well enough physically to "live independently" in his apartment. Mr. White said that "we much *insist* that, prior to your returning to your apartment, your physician provide the Theatre with written confirmation that you can live independently in your apartment. We must also *insist* that, prior to providing this information, your physician speak with me, reviewing this decision and his understanding of the physical limitations of your apartment."

Mr. White's demand that he speak to Mr. Patten's doctor and receive written assurances concerning Mr. Patten's medical condition before allowing Mr. Patten to return to *his* apartment at the Fox was yet another way in which Mr. White and the Board treated Mr. Patten in a discriminatory fashion and with an utter disregard for his rights under the Georgia Fair Housing Act and the federal Fair Housing Act.

And to make matters worse, Mr. White's letter concluded with an unmistakable threat to terminate Mr. Patten's lease because of the Fox's perception of his health condition. If Mr. Patten refused to comply to Mr. White's demand that he move into an assisted living

facility, Mr. White said it would then be “regrettably... necessary to exercise [the termination provisions of] section 9.1(b) of the lease in order to protect your health and utilize the space for sorely needed expansion.” Of course, as the Fox later admitted, Mr. White’s threat of termination was not only regrettable, but based on yet another false predicate. During a recorded conversation with the Atlanta Journal-Constitution, the current general manager of the Fox, Allan Vella, admitted that the Fox does not need Mr. Patten’s apartment for expansion, much less “sorely” so.

Mr. White’s attempts and those of other members of the Fox Board to threaten Mr. Patten and force him to surrender his apartment and move at his own expense into an assisted living facility-- and the decision of the Board to ratify these actions by voting to terminate Mr. Patten’s lease based on Mr. Patten’s physical limitations and medical conditions-- are in clear violation of the prohibitions in both the federal Fair Housing Act, 42 U.S.C. § 3601, *et seq.*, and the Georgia Fair Housing Act, O.C.G.A. § 8-3-200 *et seq.*, against discrimination by landlords against tenants based on their physical or medical conditions.

The so-called “Occupancy Agreement” that the Board has proposed to Mr. Patten is not only unacceptable to Mr. Patten, but is itself unlawful. Under both the Georgia and federal Fair Housing Acts, it is unlawful to Atlanta Landmarks, Inc. “to discriminate against any person in the *terms, conditions, or privileges* of sale or rental of a dwelling... because of a disability” or perception of disability. O.C.G.A. § 8-3-202(7)(A). yet the “Occupancy Agreement confirms that Atlanta Landmarks, Inc., seeks to impose additional restrictions on Mr. Patten’s residency only because of his perceived disability. It explicitly references Mr. Patten’s health, explicitly precludes Mr. Patten from requesting reasonable accommodations, and observes that it is Atlanta Landmarks, Inc.’s “opinion” that Mr. Patten should not be provided medical assistance within his residence. It further provides that Mr. Patten shall leave the residence if he determines he needs “assisted living” services. See Par. (4)c. In addition, the proposed “Occupancy Agreement” grants Atlanta Landmarks unfettered discretion to “regulate the access of [Mr. Patten] and of any invitees of [Mr. Patten]... as [the Fox] may determine.” See Par. 4(b). No reasonable person would agree to a lease that allows the landlord unfettered discretion to restrict the tenant’s access to their own residence.

As stated earlier, Mr. Patten had devoted over 50 years of his life to the restoration and preservation of the Fox Theatre as a National Landmark and architectural treasure. Mr. Patten still loves the Fox and has no desire to sue the Fox unless forced to do so by the unlawful actions of Atlanta Landmarks, Inc. Therefore Mr. Patten is willing to give the Board a reasonable opportunity to save face by remedying its unlawful action voluntarily and on its own without being forced to do so by court order. Mr. Patten hereby requests that, on or before September 30, 2010, the Board: (1) promptly rescind its decision to

terminate his lease and promptly reinstate the terms of Mr. Patten's original 1979 lease, as amended; and (2) provide Mr. Patten written assurance that Atlanta Landmarks, Inc. will not terminate his lease at any time in the future for any reason other than a material breach of the lease by Mr. Patten, or otherwise attempt to interfere with Mr. Patten's right to the full and quiet enjoyment of his apartment at the Fox for the remainder of his life as provided in Paragraph 1.3 of the lease. There are the terms under which Mr. Patten is willing to resolve the issue.

Let there be no misunderstanding. If the Board fails to voluntarily rescind the termination of Mr. Patten's lease by September 30th and to give Mr. Patten the written assurance above, Mr. Patten will bring an action to enjoin the Fox from unlawfully terminating his lease, and will seek to recover the full amount of his damages, attorney's fees, and other costs of litigation. Of course Mr. Patten would prefer not to be forced to do so.

In the meantime, you are requested to instruct all employees of the Fox and all members of the Board of Trustees of Atlanta Landmarks to preserve all e-mails, letters or other records, including video and electronic recordings as well as paper records, that in any way refer to Mr. Patten's health, physical condition, any desire to induce, persuade, or force Mr. Patten to surrender his apartment at the Fox and move into an assisted living facility, as well as any other documents that may be relevant to this dispute or to the meaning of the December 28, 1979 lease, for use as evidence in the event litigation becomes necessary.

Yours very truly,

Emmet J. Bondurant

EJB:mac

cc: Mr. Joe Patten
Robert L. Foreman, Jr. Esq.
Michael A. Caplan, Esq.